

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DONALD B. BAYLIS, SR.,)	
)	
Plaintiff,)	
)	
v.)	CIV-07-987-R
)	
OKLAHOMA DEPARTMENT OF CORRECTIONS, et al.,)	
)	
Defendants.)	

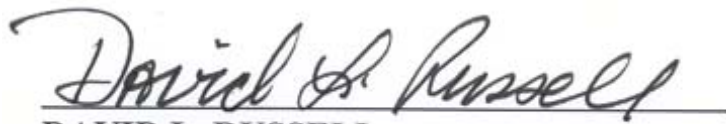
ORDER

Before the Court are the Report and Recommendation of the United States Magistrate Judge entered November 20, 2007 [Doc. No. 8] and Plaintiff's motion for stay and abeyance. Doc. No. 9. The Magistrate Judge recommended dismissal of Plaintiff's 42 U.S.C. § 1983 claims for money damages against the Oklahoma Department of Corrections and Defendants Higgins and McGee, in their official capacities, based upon Eleventh Amendment immunity. The Magistrate Judge recommended that Plaintiff's claims against Defendants Higgins and McGee, in their personal capacities, challenging the validity of the procedures employed in a disciplinary proceeding, be dismissed as premature under Heck v. Humphrey, 512 U.S. 477 (1994) and Edwards v. Balisok, 520 U.S. 641 (1997). The Magistrate Judge recommended that the dismissal of Plaintiff's Complaint be without prejudice but count as one strike.

Plaintiff does not disagree with or object to the Magistrate Judge's analysis. But he requests in his motion for stay and abeyance that the Court not dismiss this action or treat it

as a strike but that it hold the action in abeyance. Plaintiff has cited no authority suggesting that Plaintiff's proposed disposition of this action is appropriate. The Court has found no Tenth Circuit authority or case(s) from any court in which an action premature under Heck and its progeny has been stayed until the action ripened or matured, i.e., until the conviction or disciplinary action was invalidated. Nor has the Court located any cases suggesting that such a procedure is appropriate. Therefore, Plaintiff's motion for stay and abeyance [Doc. No. 9] is DENIED; the Report and Recommendation of the Magistrate Judge [Doc. No. 8] is ADOPTED; Plaintiff's Complaint is DISMISSED without prejudice; and DISMISSAL herein shall count as one strike pursuant to 28 U.S.C. § 1915(g) after Plaintiff has exhausted or waived his right to appeal.

IT IS SO ORDERED this 5th day of December, 2007.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE